SENATE, No. 296



STATE OF NEW JERSEY

218th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Co-Sponsored by:

Senators Diegnan, Turner, Greenstein, Singleton, Singer, Weinberg, Gopal, Sacco, Andrzejczak, Lagana, Codey, Gill, Brown, Cryan, Sarlo, Rice and A.M.Bucco

SYNOPSIS

Concerns subcontracting agreements entered into by public school districts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning collective bargaining agreements and subcontracting and supplementing P.L.1941, c.100 (C.34:13A-1 et seq.).

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the Commissioner of Education or the State Board of Education.

"Employee" means any employee, whether employed on a full or part-time basis, of an employer.

"Subcontracting" means any action, practice, or effort by an employer which results in any services or work performed by any of its employees being performed or provided by any other person, vendor, corporation, partnership or entity.

"Subcontracting agreement" means any agreement or arrangement entered into by an employer to implement subcontracting, but shall not include any contract entered into pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.), or any contract entered into to provide services to nonpublic schools through State or federal funds.

2. Except for actions of an employer expressly required or prohibited by the provisions of this act, all aspects or actions relating to or resulting from an employer's decision to subcontract including, but not limited to, whether or not severance pay is provided, shall be mandatory subjects of negotiations.

3. No employer shall enter into a subcontracting agreement which affects the employment of any employees in a collective bargaining unit represented by a majority representative during the term that an existing collective bargaining agreement with the majority representative is in effect. No employer shall enter into a subcontracting agreement for a period following the term of the current collective bargaining agreement unless the employer:

a. Provides written notice to the majority representative of employees in each collective bargaining unit which may be affected by the subcontracting agreement and to the New Jersey Public Employment Relations Commission, not less than 90 days before the employer requests bids, or solicits contractual proposals for the subcontracting agreement; and

b. Has offered the majority representative of the employees in each collective bargaining unit which may be affected by the subcontracting agreement the opportunity to meet and consult with the employer to discuss the decision to subcontract, and the opportunity to engage in negotiations over the impact of the subcontracting. The employer's duty to negotiate with the majority representative of the employees in each collective bargaining unit shall not preclude the employer's right to subcontract should no successor agreement exist.

4. Each employee replaced or displaced as the result of a subcontracting agreement shall retain all previously acquired seniority during that period and shall have recall rights whenever the subcontracting terminates.

5. An employer who violates any provision of this act shall be deemed to have committed an unfair practice, and any employee or majority representative organization affected by the violation may file an unfair practice charge with the New Jersey Public Employment Relations Commission. If the employee or organization prevails on the charge, the employee is entitled to a remedy including, but not limited to, reinstatement, back pay, back benefits, back emoluments, tenure and seniority credit, attorney's fees, and any other relief the commission deems appropriate to effectuate the purposes of this act.

6. Nothing in this act shall be construed as authorizing subcontracting which is not otherwise authorized by law. Nothing in this act shall be construed as restricting or limiting any right established or provided for employees by section 7 of P.L.1968, c.303 (C.34:13A-5.3); the purpose of this act is to provide rights in addition to those provided in that section.

7. This act shall take effect immediately.

STATEMENT

This bill prohibits an employer from entering into a subcontracting agreement which may affect the employment of any employees in a collective bargaining unit under any circumstances during the term of an existing collective bargaining agreement covering the employees. The bill defines "employer" to include any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the Commissioner of Education or the State Board of Education.

The employer is permitted to enter into a subcontracting agreement for a period following the term of a current collecting bargaining agreement only if the employer:

first, provides notice to both the majority representative of employees in each collective bargaining unit and to the Public Employment Relations Commission at least 90 days prior to any effort by the employer to seek the subcontracting agreement; and

second, offers the majority representative the opportunity to meet and discuss the decision to subcontract and negotiate over its impact. The employer's duty to negotiate over the impact of the subcontracting would not preclude the employer's right to subcontract should no successor agreement exist.

The bill makes all actions of an employer regarding subcontracting, except for those expressly required or prohibited by the bill, mandatory subjects of negotiations.

Each employee replaced or displaced because of a subcontracting agreement would retain all previously acquired seniority and would have recall rights when the subcontracting terminates.

The bill provides that an employer who violates the act has committed an unfair practice and may be subject to an unfair practice charge with the Public Employment Relations Commission, under which the employee may be entitled to a remedy including, but not limited to: reinstatement, back pay, back benefits, back emoluments, tenure and seniority credit, and attorney's fees.